

REMARKS

Claims 1-33 are pending in the application. The status of the application is as follows:

Claims / Section	35 U.S.C. Sec.	References / Notes
14	Objection	<ul style="list-style-type: none">• Dependent upon a rejected base claim, but otherwise allowable.
1-5, 7-11, 15-18, 20-26 & 28-32	§102(e) Anticipation	<ul style="list-style-type: none">• Tajima, et al. (U.S. Patent No. 6,557,558).
6, 12, 13, 19, 27 & 33	§103(a) Obviousness	<ul style="list-style-type: none">• Tajima, et al. (U.S. Patent No. 6,557,558); and• Hall, et al. (U.S. Patent Publication No. 2003/0181809).

5 Applicants thank the Examiner for indicating the allowability of claim 14.

Applicants have amended claim 1 to include the limitations of claim 6 (which has been cancelled) and to further indicate that the 2D basic image is determined based on information acquired with an acquisition device. Support for this aspect can be found in paragraphs [0034-35] of the present application.

10 Claim 9 has been further amended to indicate that the 2D auxiliary image is determined based on information acquired with an acquisition device. Support for this aspect can be found in paragraphs [0036-37] of the present application. Claim 14 has been amended to put it in independent format, based on the claims from which it depends.

15 Applicants have additionally provided discussion below as to why the present invention is distinguishable from the art cited against it.

Applicants' use of reference characters below is for illustrative purposes only and is not intended to be limiting in nature unless explicitly indicated.

**35 U.S.C. §102(e), CLAIMS 1-5, 7-11, 15-18, 20-26 & 28-32 ANTICIPATION BY
TAJIMA**

- 5 1. *The anticipation of claims 1-5, 7-11, 15-18, 20-26 & 28-32 is rendered moot by the inclusion of the limitations of claim 6 into the above-identified claims, either directly or through their dependence from amended claim 1.*

Applicants have amended independent claim 1 to include the limitations of claim 6. All claims listed in the heading above depend either directly or indirectly
10 from claim 6, and therefore also include the limitations of claim 6.

In the OA, on p. 9, second paragraph, the Examiner stated:

15 Claim 6 adds into claim 1 "determining the basic presentation and basic image as perspective projections such that their projection parameters coincide" which Tajima does not teach.

The Examiner then applied the Hall reference as an obviating reference.

Since the addition of the claim 6 limitations renders the above rejection moot, Applicants respectfully request that this rejection be withdrawn from the present application.

20 **35 U.S.C. §103(a), CLAIMS 6, 12, 13, 19, 27 & 33 OBVIOUSNESS OVER TAJIMA IN
VIEW OF HALL**

2. *Hall is not a prior art reference that can be used to obviate the present invention since it is not proper to use Hall's priority date to attack the present application.*

In the OA, on pp. 8-11, the Examiner rejected claims 6, 12, 13, 19, 27 & 33 as being obvious over the combination of Tajima and Hall. Specifically, in the first paragraph of p. 9, the Examiner stated:

5 It is noted that both of the present application and Hall application claim Priority Dates of their Germany applications in which the Hall application pre-dates the present application.

Applicants respectfully note that, concisely stated, a foreign priority date can be used as a shield to defend against a prior art reference, but cannot be
10 used as a sword to attack an application.

This principle is formally stated under MPEP §2136.03 which expounds on the requirements for an anticipating reference with respect to a priority date under 35 U.S.C. §102(e).

Initially, however, MPEP §2136.02(III) clearly indicates that a 35 U.S.C.
15 102(e) reference can serve as a proper basis for use of the reference under 35 U.S.C. §103. Therefore, it is proper, in a general sense, for the Examiner to combine a reference that would be proper under 35 U.S.C. §102(e) as a 35 U.S.C. §103 reference as well, provided the reference could be a §102(e) rejection, which is not the case here.

20 MPEP §2136.03 notes that 35 U.S.C. §102(e) is explicitly limited to certain references "filed in the United States before the invention thereof by the "applicant" (emphasis added by the MPEP). This section notes that:

25 Foreign applications' filing dates that are claimed in applications... may not be used as 35 U.S.C. §102(e) dates for prior art purposes.... Therefore, the foreign priority date of the reference under 35 U.S.C. §119(a)-(d) (f)... cannot be used to antedate the

5 application filing date. In contrast, applicant may be able to overcome the 35 U.S.C. §102(e) rejection by proving that he or she is entitled to his or her own 35 U.S.C. §119 priority date which is earlier than the reference's U.S. filing date.

This section of the MPEP goes on to discuss a CCPA case, *In re Hilmer*, 359 F.2d 859, 149 USPQ 480, (CCPA 1996), with a set of facts very similar with the situation presented here. In that case, an applicant was able to use his
10 priority date to successfully defend against a prior art reference having a later U.S. filing date, but an earlier foreign filing date.

In the present case, the application claims the benefit of September 17, 2002 from the German priority application DE 102 43 162.0, which has been perfected with the transmission of a certified copy of the priority document on
15 September 17, 2003. This date clearly predates the November 7, 2002 U.S. filing date of the Hall reference. Since the foreign priority date of Hall is of no consequence to the 35 U.S.C. §102(e) analysis, Hall could not be used as a 35 U.S.C. §102(e) reference, and therefore is improper to include it in combination as a 35 U.S.C. 103 reference.


20 For these reasons, the Applicant respectfully request that the Examiner withdraw the §103(a) rejection from the present application.

CONCLUSION

Inasmuch as each of the objections have been overcome by the amendments, and all of the Examiner's suggestions and requirements have been
25 satisfied, it is respectfully requested that the present application be reconsidered,

the rejections be withdrawn and that a timely Notice of Allowance be issued in
this case.

Respectfully submitted,

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